

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
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Rui YAMADA et al.)	Group Art Unit: 2624
)	
Serial No.: 10/521,623)	Examiner: Bayat, Ali
)	
Filed: January 14, 2005)	Confirmation No.: 2018
)	
For: IMAGE PROCESSING METHOD,)	
IMAGE DATA PROCESSING)	
APPARATUS, AND COMPUTER)	
PROGRAM)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO REQUIREMENT FOR RESTRICTION
AND ELECTION OF SPECIES

In the Office Action mailed October 1, 2008, the period for response to which extends through November 3, 2008 (November 1, 2008 being a Saturday, and November 2, 2008 being a Sunday), the Examiner required an election under 35 U.S.C. § 121 between the following alleged species: Species I - Figure 6 (claims 45-57), Species II - Figure 12 (claims 58-69, 75, and 76), and Species III - Figure 18 (claims 70-74). The Examiner did not deem any claim as generic. See Office Action at p. 2.

Applicants provisionally elect to prosecute Species I, Figure 6, **with traverse**. Applicants submit that at least claims 45-68, and 74 are readable on elected Species I.

The Examiner indicates that Figures 6 and 12 represent different species. This is simply incorrect. Figure 6 depicts a process "in the image processing apparatus of the present invention." Applicants' Specification, p. 31. Figure 12 depicts a process "of an

image data processing method of the present invention.” Applicants’ Specification, p. 31. The Office Action apparently distinguishes method claims as being a different species than apparatus claims, even though the claims are directed to the same embodiment. This is not a proper species restriction.

Method claims 45-57, apparatus claims 58-69, and apparatus claim 74 do not recite separate species of a genus. The “species” of Figure 6 and Figure 12 do not recite mutually exclusive characteristics, as alleged (without any support) by the Examiner. See Office Action at p. 2. Furthermore, as noted in M.P.E.P. § 803(I), “there must be a serious burden on the Examiner, if restriction is required.” (emphasis added). The Examiner has shown no such burden.

In the event that the Examiner continues to believe that there is a search burden associated with examining all of the pending claims, and for the Examiner’s convenience, Applicants suggest an alternate grounds for restricting the present application.

Invention I: claims 45-68, and 74, directed to a method and apparatus for performing a final pixel value adjustment.

Invention II: claims 70-73, 75, and 76, directed to a method, apparatus, and computer-program for acquiring image data, motion information, and performing a processing based on the motion information.


If the Examiner agrees with Applicants’ alternative grounds for restriction, Applicant provisionally elects Invention I, claims 45-68, and 74.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 3, 2008

By: 
Trenton J. Roche
Reg. No. 61,164